UTUSAN MELAYU (M) BHD. & ANOR.

v.

CHAN TSE YUEN

SUPREME COURT, KUALA LUMPUR
MOHD. AZMI SCJ
WAN HAMZAH SCJ
WAN SULEIMAN SCJ
[CIVIL APPEAL NO. 515 OF 1987]
13 DECEMBER 1988

CIVIL PROCEDURE: *Injunction - Loyalty of non-Malays subject of essay contest - No justiciable cause of action - No legal right infringed.*

CONSTITUTIONAL LAW: *Citizenship - Loyalty of non-Malays subject of essay contest - Right of non-Malays to be accepted as loyal citizens - Words used not defamatory - No justiciable cause of action.*

This was an appeal against the decision of the High Court which granted an interim injunction to the respondent/plaintiff whereby the appellants/defendants were restrained from carrying out an essay contest in their newspaper on the loyalty of non-Malay citizens. The High Court had held that the respondent's right to be accepted as a loyal Malaysian citizen was infringed.

Held:

[1] The respondent did not have a justiciable cause of action as he did not show that any legal right had been infringed. The fear that the contest might create illwill and enmity between races was not supported by evidence, such as the essays which were submitted for the contest. It was not shown that the words used were defamatory. The fact that those words were injurious to his dignity was not a justiciable matter.

[2] The action was an ordinary personal action against the appellants.

[Appeal allowed with costs.]

Case referred to:
The American Cynamid case [1975] AC 396

Legislation referred to:
Courts of Judicature Act 1964, s. 42

For the appellants/defendants - Lim Chor Pee; M/s. Albar, Zulkifly & Yap
For the respondent/plaintiff - N. Chandran; M/s. Leonard Peters & Co.

JUDGMENT

This is an appeal against the decision of the High Court Judge in Kuala Lumpur in granting the plaintiff, an order of interim injunction dated 14 August 1987, which would have the effect of temporarily restraining the defendants from carrying on an essay contest in their Malay language newspaper (Utusan Malaysia) on the subject of "To what extent are non-Malay citizens loyal to this country". The contest was open only to non-Malay readers of the newspaper in the "Views of the non-Malays" column with winning prizes ranging from RM20 to RM200. The contest commenced on 18 April 1987, and it is common ground that by the time the plaintiff's application for interim injunction was heard on 2 July 1987, the essay contest was already carried out and concluded.

It is pertinent to observe that the plaintiff's action by originating summons dated 9 June 1987 contained prayers solely for injunctive remedy. On the basis of *The American Cynamid* case [1975] AC 396 it is a well established principle that an interlocutory injunction is a discretionary relief. It is a form of judicial relief whereby the Court orders a party to the proceedings either to refrain from doing specific acts or to do certain specified acts. It may be granted if it appears to the Court to be just or convenient so to do in order to safeguard the position of one of the parties until his rights can finally be determined at the trial of the action. So long as there is a serious question to be tried, that is to say so long as the plaintiff's claim is not frivolous or vexatious, the Court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief.

At the hearing of the application for interim injunction, a preliminary objection was raised before the learned Judge on the issue of the *locus standi* of the plaintiff to bring the action. After disposing of the objection in the plaintiff's favour, the Learned Judge went on to grant the interim injunction apparently without considering the application on the merits. In para. 6 of the memorandum of appeal, the appellants/defendants contend that,

> The Learned Judge erred in law in granting the interim injunction after deciding the *locus standi* issue in favour of the respondent without any opportunity given to the appellants to submit upon the substantive issues of the matter which was never made in the light of the preliminary *locus standi* issue.

Before us, Counsel for the respondents did not seriously dispute that the interim order was granted by the Learned Judge without hearing arguments on the merits. In our view, on this ground alone the order ought not to have been made.

On the *locus standi* argument, the Learned Judge considered the general rule on public interest litigation against a public authority where the infringement of a public right involved an infringement also of an individual right. He however came to the conclusion, that this particular action was not a public interest litigation but an ordinary personal action against the two defendants. If so, then the question arose as to what was the right of the plaintiff that the defendants were alleged to have infringed? The Learned Judge seemed to hold that the alleged infringement related to the plaintiff's personal right as a Malaysian citizen to be accepted as loyal to the country, and the Learned Judge dealt with the subject in the following manner:

> In my view the plaintiff in the present case before me has *locus standi* in his own right. He has initiated this action not as a public interest litigation to enforce a public duty but has brought this case against the defendants to enforce, safeguard and vindicate his personal right and position as a loyal citizen of the country. It is his right to be accepted as such. As a Malaysian citizen he has taken the prescribed oath under the Federal Constitution wherein he said, - 'I hereby declare on oath that I absolutely and entirely renounce and abjure all loyalty to any country or State outside the Federation, and I do swear that I will be faithful and bear true allegiance to His Majesty Yang Di-Pertuan Agong and be a true, loyal and faithful citizen of the Federation.'
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> The topic of the contest in Utusan Malaysia does *prima facie* question the loyalty of the non-Malay citizens in the country. It is not suggested that Utusan Malaysia had any ulterior motive in bringing out this topic in their contest but it cannot be denied that by choosing this topic Utusan Malaysia wants know the extent of the loyalty of non-Malay citizens inferring thereby that their loyalty may well be up to a certain level only and not absolute as it should be. The topic is not only an affront to non-Malay citizens but it also belittles the solemn words of the oath as prescribed in the Federal Constitution.

On the facts before the Learned Judge, we agree with him that the plaintiff's action was not a public interest litigation. This is supported by the fact that the only remedy sought by the plaintiff both in his originating summons and *ex-parte* summons in chambers was for restraining orders. There was no application for any declaratory order. We are however unable to agree that the subject chosen for the essay contest can give rise to any legal right to the plaintiff either in tort or in contract. Loyalty expected of a citizen is a duty, not a right. In this case the obligation to perform the duty can be found in the prescribed oath taken by the plaintiff under the Federal Constitution. In our view the plaintiff had failed to identify any legal right sufficient to give rise to a justiciable cause of action either in his originating summons or in his affidavit in support of the *ex-parte* summons in chambers. The fear of the plaintiff that the contest might create illwill and enmity between the races in this country was based entirely on conjecture and not supported by the essays submitted for the contest. Nor is injury to his dignity a justiciable matter unless the words used are defamatory. Since the plaintiff had failed to show that the defendants had committed any wrongful act by which his personal legal right had been infringed or was likely to be infringed, there was really nothing to be protected by the interlocutory injunctions.

We would, therefore, order that the order of the Learned Judge be set aside. Since the parties were not heard on the substantive matter in the summons in chamber, we would normally have ordered for the case to be remitted back to the Learned Judge to consider the application for interim injunction on the merits. But on the evidence before the Learned Judge and the materials before us, it is obvious that the plaintiff could not possibly identify any personal legal right justifying the application for injunctive remedy, and as such there is obviously no ground at all for granting an interim injunction. The failure of the Learned Judge to address his mind properly to the principle of granting interlocutory injunction proved fatal.

The appeal is accordingly allowed with costs both here and in the Court below. Deposit to be refunded to the appellants.

Order accordingly.

Also found at [1989] 1 CLJ 149